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# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

### SINGLE MEMBER APPEAL BRANCH

Date 17/08/2010

Appeal No. E/2193/2008 – SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S ACE REFRACTORIES LTD.
KATNI REFRACTORY WORKS, KATNI (M.P.) Appellant

Vs

M/S ACE REFRACTORIES LTD.

Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.** 890 / 2010 –SM[BR] dated 4.8.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

**Date of Hearing/Decision:04.08.2010**

**Excise Appeal No.E/2193/08-SM**

[Arising out of Order-in-Appeal No.105/BPL/2008 dated 24.7.2008 passed by the Commissioner (Appeals), Bhopal].

M/s. ACE Refractories Ltd. ...Appellant

Vs.

CCE, Bhopal ... Respondent

Present for the Appellant :Shri.Ramesh Nair, Advocate
Present for the Respondent:Shri.S.R. Meena, DR

**Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER**

Final **ORDER NO.** 890/2010 SM (BR) **DATED:04.08.2010**

**PER: D.N.PANDA**

Ld. Counsel submits that when the claim for input services were detailed in annexure 2 to reply dated 23.6.07, those were not examined and the ld. Appellate Authority under time bar issue itself dismissed the appeal.

2. Ld. DR supports the order of the authority below.

3. Heard both sides and perused the records.

4. Ld. Counsel's pleading that his claim was not properly addressed by the ld. Appellate Authority is correct, in view of the only finding on the time bar issue which is coming out in the last page of the appellate order. It appears that the ld. Appellate Authority has not taken pain to examine each and

every plea made by the appellant nor also reasons for the claim has been given by the appellate order to draw a proper conclusion.

5. When the authority did not find the case on limitation aspect, the plea on merit should have been dealt to do justice to the appellant. It should be appreciated that not only justice is to be done, but that must be seemed to have been done. Nothing seems to be apparent from the order of the authority below. The appellant, no doubt, made a claim on various aspects in terms of its Annexure to reply dated 23.6.07. These materials were very well before the learned adjudicating authority also. When the discussion and finding portion is read, it throws light that the adjudicating authority had not examined the materials on record when there is no whisper on the same. Immediately discussing the definition of "input service", only on the ground that evidence was not produced, learned Authority below disallowed the claim of appellant. Such a practice gives rise to undesirable litigation.

6. An aggrieved has every right to be dealt fairly under the law. None of the orders of the authority below show that they have examined the claim of the appellant threadbare on the touch stone of definition of input service. When such examination is absent in the order, the matter has to be restored to the file of ld. Adjudicating authority to re-do the adjudication within the scope of show cause notice, on the basis of materials available on record. The time bar issue is

also to be looked into by the ld. Adjudicating authority with clear finding. A mechanical order is not expected in denovo adjudication. If a reasoned and speaking order is passed, that may reduce the litigation.

7. Consequently, the order of the authority below is set aside and the matter is remanded to the ld. Adjudicating Authority to complete the re-adjudication by end of December 2010, granting fair opportunity of hearing to the appellant. It is made clear to the appellant that in respect of each claim, necessary evidence and reason of the claim is to be placed before the authority in the course of readjudication.

[Dictated & Pronounced in the open Court].

**(D.N.PANDA)**
**JUDICIAL MEMBER**

Anita